

Tab B - Emergencies Act (EA): Background

- The EA authorizes action when one of four types of emergencies is declared: a public welfare emergency, public order emergency, international emergency, and war emergency.
- In the current context, the “public order emergency” applies and means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.
- A national emergency is an urgent and critical situation of a temporary nature that:
 - a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
 - b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada.

and that cannot be effectively dealt with under any other law of Canada.

- The Act defines “threats to the security of Canada” by reference to section 2 of the *Canadian Security Intelligence Service Act*, which specifically excludes “lawful advocacy, protest or dissent” unless it is done in conjunction with another activity referenced in the section:
 - espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
 - foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
 - activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
 - activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.
- The determination that “threats to the security of Canada” in the current circumstances gives rise to an emergency that is so serious as to be a national emergency must be based on evidence. The declaration and measures taken thereunder will be subject to Parliamentary and public scrutiny, and will likely be challenged in court.
- Under the EA, the Governor in Council (GIC) is authorized to declare a public order emergency as a measure of last resort having regard to other federal, provincial or territorial authorities when it reasonably believes on reasonable grounds that there is

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a threat to the security of Canada that is so serious as to be national emergency within the definitions above..

- Federal action cannot unduly impair the ability of the province to act. It is assumed the province/territory will continue to take its own measures to deal with the emergency, and any federal action taken must be with a view of working collaboratively with each province/territory.
- Under the EA, the following types of orders or regulations can be made if they are determined on reasonable grounds to be necessary for dealing with the emergency:
 - the regulation or prohibition of
 - any public assembly that may reasonably be expected to lead to a breach of the peace,
 - travel to, from or within any specified area, or
 - the use of specified property;
 - the designation and securing of protected places;
 - the assumption of the control, and the restoration and maintenance, of public utilities and services;
 - the imposition
 - on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
 - on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,
 - for contravention of any order or regulation made under this section.
- The declaration of a public order emergency requires consultation with each province in which the effects of the emergency occur. A First Ministers Meeting will meet the requirements for consultation with the provinces under the EA.
- A declaration of a public order emergency when the order is national in scope must specify:
 - the state of affairs constituting the emergency; and
 - the special temporary measures that the GIC anticipates may be necessary for dealing with the emergency.
- s.39
- The declaration of a public order emergency is effective on the day on which it is issued, but a motion confirming the declaration shall be laid before each House of Parliament within seven sitting days after the declaration is issued.

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- Any measure taken to address a public order emergency is subject to the *Charter of Rights and Freedoms* (the *Charter*). Powers under the EA could conceivably be used in numerous ways that may limit Charter rights or freedoms (e.g., right to protest). Section 1 of the *Charter* allows the government to impose reasonable limits on rights and freedoms. Limits are reasonable if they pursue a pressing and substantial objective in a proportionate manner.
- The declaration, related orders or regulations could be challenged in court by way of a judicial review. This could be done primarily on two grounds – *vires* (powers) and reasonable measures – but also on constitutional grounds – compliance with the *Charter* and division of power. These grounds could be well defended in the courts if the federal government relies on facts and evidence of threats before taking action (evidence which could be made public, including via court proceedings).

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